

composition and Group II relate to methods of treating disease or condition of the skin and the transdermal delivery of a therapeutically effective amount of drug. The Patent Office takes the position that the two inventions are distinct because the pharmaceutical composition can be used in a materially different way.

Applicants respectfully traverses the Patent Office's conclusions that the claims can be restricted to two groups of claims (Group I and II), each of which the Patent Office alleges are distinct, each from the other. Applicants respectfully submit that the restriction requirement made previously by Examiner Nutter and by Examiner Peselev in application 07/838,674 wherein the said Examiner has not sought the same type of restriction as the Examiner herein requires (while the subject matter in application 07/838,674 is different, there are similarities and include both composition and method claims) that there are two inventions. The patent has not shown there to be two different inventions. In any event, Applicants provisionally elect to proceed with the examination of the Group II claims - the methods claims, claims 6-20.

The Examiner has taken the position that if Applicants elect Group II claim, then Applicants are required to elect a species from within that group. The Examiner states that the methods are drawn to methods of treating different and unrelated diseases or skin conditions which have different ideologies and are treated with different reagents. The Examiner has stated that currently claims 7-15, 17, 18, 19 and 20 are generic. The only two remaining claims are 6 and 16 which identify in the method claims the diseases or conditions to be treated. Applicants provisionally elect species A of Group II (basal cell carcinoma) as the species to be examined. The claims readable thereon are 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20. The

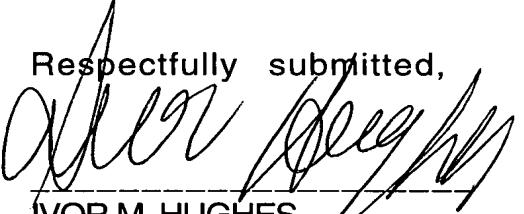
Examiner has provided that upon allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim.

Applicants are, under separate cover, filing a Voluntary Amendment together with a Supplementary Information Disclosure Statement adding additional claims that are presently being examined before the PCT Office (Patent Cooperation Treaty Office) in respect of an application incorporating the subject matter of this application together with other subject matter. In the Voluntary Amendment, the Applicants will identify within the method claims the same species (basal cell carcinoma - species A).

While Applicants have elected the Group II claims and species A above for the examination of the subject matter of this application, Applicants have not, however, elected the said claims and species for the examination of any continuation, continuation-in-part or divisional applications filed based on this application and not for examining any reissue application in respect of any patent issuing from this application.

Should any questions arise, the Examiner is requested to contact IVOR M. HUGHES or MARCELO K. SARKIS collect at (905) 771-6414 at her convenience.

Respectfully submitted,


IVOR M. HUGHES
Registration No. 27,759
Agent for the Applicants.

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